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FEDERAL COMMUNICATIONS
COMMISSION
LETTER OF SECRETARY

April 25, 1997

William F. Caton
Secretary
Federal Communications Commission
1919 M. Street, N.W.
Washington D.C. 20554

Re: Ex parte contact in CC Docket No. 96-254

Dear Mr. Caton:

At the invitation of Commission staff, on April 23, 1997, Colleen Boothby, Janine Goodman, Fiona Branton and Mary Brooner, on behalf of the Information Technology Industry Council, met with Les Selzer, Gregory Cooke, William Howden and Matthew Nagler of the Network Services Division to discuss ITI's comments in the above-referenced docket and subjects detailed in the enclosure hereto.

Pursuant to 47 C.F.R. Section 1.1206(b)(2) an original and one copy of this letter are being filed with the Secretary of the Commission today.

Sincerely,



Janine F. Goodman

Enclosure

278.01/safegrds/Ex Parte 273

**§ 273 Rulemaking
FCC Meeting questions**

1. How should collaboration be defined?
 - Overall position: Variety of arrangements that could lead to innovative products is impossible to define now. Collaboration should not be narrowly defined to limit the range of possible collaborations.
 - FCC rules should distinguish between collaboration regarding *generic* specifications and the desired product attributes or outcome of the development process, on the one hand, and collaboration regarding manufacturing solutions or applications for achieving the desired outcome.
 - It is more practical at this stage to define collaboration in terms of what it is not, excluding arrangements that encourage anti-competitive behavior or otherwise facilitate behavior inconsistent with the statutory objectives. Key concepts would include relationships between a BOC and a manufacturer that result in equity ownership, intellectual property ownership, or effective economic influence and control. Arrangements such as "funding development," "joint ventures," and "investing in manufacturing companies" proposed by SBC fall into the latter category and should be rejected.
2. Why does ITIC believe that posting of BOC protocols and technical requirements on the Internet is insufficient?
 - Hard copy filings are the only practical means of ensuring secure, consistent, accurate formatting, pagination, and standardized references when bulk of information to be disclosed is data, not text.
3. Explain how ITIC's theory of flexible reporting of changes in protocols and technical information could be implemented and enforced. How could the "additional information" aspect of the proposal be kept from becoming burdensome or abusive?
 - Overall position:
 - Give BOCs flexibility regarding the timing of their disclosure with a minimum period established by the FCC.
 - Opportunity to request more information from BOC without FCC intervention
 - Expedited process for disputes (deadlines for BOC response in writing to requests for additional information, quick processing of FCC complaints, delay BOC offering of network service or

change (but NLT 60 days after filing a complaint) pending resolution of dispute).

- Section 251 rules contemplate procedures for resolving disputes over a BOC's choice of a notice period that could be adapted to this setting

4. What bright-line test can be developed to separate bona fide equipment trials from attempts to evade Section 273(c)?

- Overall position: Information disclosed during an equipment trial is subject to 273 requirements. Competition in the equipment market is injured by discriminatory disclosure to a participant in equipment trial *whether or not* the equipment trial is bona fide. Therefore, bona fide nature (or not) of equipment trial is irrelevant to 273 disclosure requirements.
- No exclusion in 273 for information disclosed during equipment trials
- Information disclosed by a *manufacturer* to a BOC during a field test is not disclosable under Section 273.

5. Explain how and why the disclosure and filing requirements of 251 differ from those in 273.

- Sections 251 and 273 establish different information disclosure requirements by their explicit language. In particular, Section 273 requires BOCs to disclose *protocols and technical requirements*. Section 251 does not.

<u>Section 251 language</u>	<u>Section 273 language</u>
	<i>Protocols and technical requirements for connection and use of a BOC's telephone exchange service facilities</i>
<i>Changes in information necessary for transmission and routing of services using BOC facilities or networks</i>	<i>Material or planned changes to protocols and technical requirements for connection</i>
<i>Changes that impact the interoperability of facilities or networks</i>	
	<i>The schedule for implementation of changes</i>

- No Section 251 disclosure for *new* technologies and equipment. Section 273 requires such disclosure.
- Section 251's "make/buy" rules have limited utility for CPE which BOCs would not make or buy for network use

6. Elaborate on (1) the manner in which Commission rules may distinguish between information regarding the BOC's network and information concerning a collaborator's equipment, and (2) what incentives can the Commission offer BOCs for early disclosure?

(1) BOC network information v. collaborator equipment information

- Overall position: Section 273 requires non-discriminatory disclosure (via FCC filings) of network information and changes affecting TE and CPE. FCC rules must also protect proprietary information disclosed to a BOC by a collaborator. Disclosure rule applies to information disclosed *from* a BOC to the collaborator.
- TE raises special issues -- information re equipment for a BOC's network can be *both* BOC network information and collaborator's proprietary equipment information.
 - Network information passed *by* BOC to TE collaborator is subject to 273 rules (disclosure to all or disclose to none)
 - Collaborator's proprietary equipment information passed to BOC is not subject to 273 rules until BOC reaches make/buy point
 - *After* make/buy point, collaborator's proprietary information is subject to 273 *to the extent that* it constitutes "protocols and technical requirements" in 273.
 - Therefore, BOC can only disclose collaborator information to others if it discloses to all, per 273 rules
 - *Before* make/buy point, 273 does not apply to collaborator information. Other manufacturers (like CPE manufacturers) can get information per industry practice of non-disclosure agreements
 - Problem: BOCs could "game" make/buy point and disclose collaborator information to BOC manufacturing affiliate *before* 273 disclosure requirements apply
 - Therefore, FCC should establish rebuttable presumption: BOC make/buy point occurs when information passed to

BOC manufacturing affiliate (why else would BOC have passed the information on?)

(2) Incentives for early disclosure

- Establish minimum period prior to introduction of any service or network change by which disclosure required
- Expeditious procedural remedies for non-compliance
- BOC implementation delayed pending its response to requests for more information and dispute resolution by the FCC, or 60 days following filing of complaint.

7. How can the BOCs dominate the standard setting process given the already competitive manufacturing marketplace and ANSI type procedures for standards-setting organizations?

- ITI has no association position on this question.

273.01/safegrds/273 FCC Mtg questions